



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,459	10/12/2000	Arthur M. Tofani, Jr.	E-1902	7967
7590	02/17/2005		EXAMINER	
HARDING, EARLEY, FOLLMER & FRAILEY 86 THE COMMONS AT VALLEY FORGE 1288 VALLEY FORGE ROAD P.O. BOX 750 VALLEY FORGE, PA 19482			GELLNER, JEFFREY L	
		ART UNIT	PAPER NUMBER	3643

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JB

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/689,459	TOFANI, JR. ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 November 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 23-25, 27-29 and 53 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 23-25, 27-29 and 53 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

**DETAILED ACTION*****Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wilson (US 5,641,233; 3<sup>rd</sup> document listed on page 1 of Applicant's 1449 received 6 April 2001) in view of Cameron (AU 9466054 A).

As to Claim 53, Wilson discloses an applicator (Figs. 1-5) comprising a compound in a reservoir (14 of Figs. 1 and 2) and a regulatable valve (generally 259 of Figs. 1 and 2) on the reservoir; the regulatable valve having a first valve element (18 and 11 of Figs. 1 and 2) and a second valve element (28 and 16 of Figs. 1 and 2) relative to the first valve element, the second valve element having a brush (12 of Figs. 1 and 2); the herbicide is delivered from the reservoir to the brush (Figs. 1 and 2); the flow is regulated by the position of the regulatable valve (from col. 2 lines 42-64) by applying force which moves the valve element from a first to second position, the position having a plurality range of positions (col. 2 lines 62-64), releasing the force being applied allows the valve element to maintain its position (from col. 2 lines 62-64). Not disclosed is the applicator used for applying herbicide to a plant. Cameron, however, discloses the use of brush application for application of herbicide to a plant. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify application of Wilson by

Art Unit: 3643

using to apply herbicide as disclosed by Cameron so as to increase the usefulness of the applicator so as to increase sales. The application of Wilson as modified by Cameron inherently performs the method steps recited in claim 53.

As to Claim 23, the limitations of Claim 53 are disclosed as described above. Not disclosed is the use of oil-based herbicides. Examiner takes official notice that it is old and notoriously well known in the pesticides art to use oil base herbicides in herbicide applicators are use. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the applicator of Wilson as modified by Cameron by using the apparatus with oil-based herbicides so as to apply the desired and most effective herbicide.

Claims 24, 25, 27, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,641,233; 3<sup>rd</sup> document listed on page 1 of Applicant's 1449 received 6 April 2001) in view of Cameron (AU 9466054 A) in further view of Ostrowsky (US 3,993,208).

As to Claim 24, the limitations of Claim 53 are disclosed as described above. Not disclosed is a safety cover means with securing means of rotating the cover means past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the application of Wilson as modified by Cameron by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10).

Art Unit: 3643

As to Claim 25, Wilson as modified by Cameron and Ostrowsky further disclose application of a positive force to a portion of the cover means to enable forward rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33; inherent in Fig. 1 of Ostrowsky).

As to Claim 27, Wilson as modified by Cameron and Ostrowsky further disclose a step of removing from the applicator an overcap which selectively covers the applicator (inherent in Fig. 1 of Ostrowsky).

As to Claim 28, the limitations of Claim 53 are disclosed as described above. Not disclosed are a safety cover means that fits on the reservoir and is rotatable past a predetermined stop to block reverse rotation. Ostrowsky, however, discloses the use of a cover means (36 of Fig. 1) that fits on a reservoir (10 of Fig. 1) with a securing means (20 and 51 of Fig. 1) of rotating the cover means past a predetermined stop to block reverse rotation. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the application of Wilson as modified by Cameron by including a cover means with securing means that blocks reverse rotation as disclosed by Ostrowsky so as to deny access to children (see Ostrowsky col. 1 lines 5-10).

As to Claim 29, Wilson as modified by Cameron and Ostrowsky further disclose application of a force to a portion of the cover means to enable forward rotation to release it from the reservoir (see Ostrowsky col. 4 lines 12-33; inherent in Fig. 1 of Ostrowsky).

### ***Response to Arguments***

Applicant's arguments with respect to claims 53, 23-25, and 27-29 have been considered but are moot in view of the new ground(s) of rejection. Examiner adds that the combination of

Wilson and Cameron is considered proper because the Examiner considers any applicator to have multiple and varied uses. De Laforcade, for example, discloses a spray applicator to have a wide range of uses, including application of insecticides, at col. 1 lines 11-16. For the instant application, Wilson discloses a brush applicator which meets Applicant's claim language with a stated use to "dispense fluid products such as ketchup or barbecue sauce" at col. 2 lines 65-67. Cameron discloses using a brush application to apply herbicide. It follows that it would have been oblivious to one of ordinary skill in the art to use, or substitute, Wilson's brush to apply herbicide as shown by Cameron.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rivas discloses in the prior art a brush-type applicator used to apply herbicide.

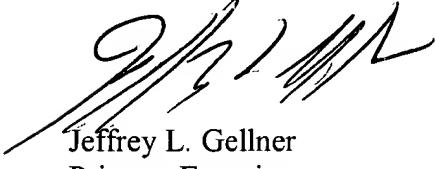
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner  
Primary Examiner